

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

Nations Rent, Inc.

Employer

and

Case No. 8-RC-16629

International Union of Operating Engineers, Local No. 18, AFL-CIO

Petitioner

**ORDER DIRECTING HEARING ON
CHALLENGED BALLOT AND NOTICE OF HEARING**

Pursuant to a Petition filed on June 2, 2004, and a Stipulated Election Agreement approved by me on June 15, 2004, an election was conducted on July 14, 2004, among the employees in the following described unit:

All full-time and regular part-time employees employed by the Employer at its Perrysburg, Ohio facility, excluding all office clerical employees, outside sales representatives and all professional employees, guards and supervisors as defined in the Act.

The Tally of Ballots issued after the election shows that of approximately eight (8) eligible voters, eight (8) cast ballots, of which four (4) were cast for and three (3) against the Petitioner. There was one (1) challenged ballot, a number sufficient to affect the results of the election. No objections were filed.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the challenge has been conducted. I have determined that the challenge to the ballot of Annette Wittscheck raises substantial and material issues of fact and law that cannot be resolved *ex parte* and must be resolved at a hearing.

THE CHALLENGE

In support of its challenge, the Petitioner submitted evidence indicating that the Employer has assigned Ms. Wittscheck varying job titles and duties, that she performs generally the job duties of a clerical employee, and that she is paid a commission rather

than an hourly rate. Thus, the Petitioner argues that she was not an eligible voter in the election because she does not share a community of interest with unit employees.

According to the Employer, Ms. Wittscheck was an eligible voter in the election. The Employer supports that position with evidence indicating that Ms. Wittscheck is employed as either an “inside sales person” or “counterperson”. Her job duties include assisting customers in the selection of rental equipment, entering customer orders into the computer system, stocking and maintaining the showroom and parts, and assisting in the operation and delivery of equipment rentals. The Employer insists that Wittscheck works with and has direct and daily interaction with all of the other unit employees. In fact, the Employer claims that its payroll records show that Wittscheck has averaged in excess of 11 hours per week performing mechanic’s duties since the first of the year. The Employer maintains that Wittscheck is an hourly employee, receives paid overtime, is supervised by the same supervisors as the rest of the unit employees, and that she is paid slightly less than a truck driver and slightly more than a yard employee. Finally, the Employer points out that Ms. Wittscheck would be the only hourly employee excluded from the unit were she ineligible to vote in the election.

I have concluded, based on the conflicting testimony and evidence offered by the parties, that the challenge to Ms. Wittscheck’s ballot raises substantial factual and material issues that cannot be resolved *ex parte*. Therefore, I shall order that it be set for hearing.

ORDER

IT IS HEREBY ORDERED that the challenge to the ballot of Annette Wittscheck be resolved at a hearing before a duly designated hearing officer.

YOU ARE HEREBY NOTIFIED that on the 11th day of August 2004, and on consecutive days thereafter until completed, at 10:00 a.m. in a hearing room of the National Labor Relations Board, Region 8, a hearing will be conducted before a hearing officer of the National Labor Relations Board to resolve the issues raised by the challenge to the ballot of Annette Wittscheck, at which time and place the parties will have the right to appear in person or otherwise give testimony and call, examine and cross-examine witnesses and present oral argument pertinent to the issues delineated above raised by the challenge.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties, a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues raised by the challenged ballot herein. Within fourteen (14) days from the date of the issuance of said report any party may file with the Board in Washington, D.C., an original and eight (8) copies of exceptions to such report. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon each of the other parties to this proceeding and upon the Regional Director and shall file a statement of service with the Board. If no exceptions are filed to such report, the Board may, upon expiration of the period for filing

exceptions, decide the matter forthwith upon the record or make other disposition of the case.

Dated at Cleveland, Ohio this 28th day of July 2004.

/s/ Frederick J. Calatrello

Frederick J. Calatrello, Regional Director
National Labor Relations Board
Region 8

attachment